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**DECISION**



*B. Beckford*  
*Page 1*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-189072

**DATE:** August 11, 1978

**MATTER OF:** Department of the Air Force - Fraudulent  
Claims

**DIGEST:**

1. Department of the Air Force asks whether an employee who submits a fraudulent claim may be refused access to the General Accounting Office (GAO) for purpose of settling his claim. Since GAO has authority to settle and adjust claims by the Government or against it, employee may submit claim to GAO even though it is considered fraudulent by his agency. Agency should expedite adjudication by using agency channels to send claim to GAO with its report.
2. Where employee submits voucher for travel expenses and part of claim is believed to be based on fraud, only the separate items which are based on fraud may be denied. Moreover, as to subsistence expenses only the expenses for those days for which the employee submits fraudulent information may be denied and claims for expenses on other days which are not based on fraud may be paid if otherwise proper. B-172915. September 27, 1971, modified.
3. Where employee has been paid on voucher for travel expenses and fraud is then found to have been involved in a portion of claim, the recoupment of the improperly paid item should be made to the same extent and amount as if his claim were not yet paid and were to be denied because of fraud. Decision 41 Comp. Gen. 285 (1961) and 41 id. 206 (1961) are clarified.
4. Reasonable suspicion of fraud which would support denial of claim or recoupment action in case of paid voucher depends on facts of each case. Fraud must be proved by evidence sufficient to overcome existing presumption in favor of honesty and fair dealing. Generally,

B-189072

where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, fraud would not be found absent the most convincing evidence to the contrary. Where discrepancies are glaring, large sums are involved, or they are frequently made, a finding of fraud is more readily made absent satisfactory explanation from claimant.

5. When an employee receives a travel advance and then submits a false final settlement voucher, the separable items on the voucher attributable to false statement are subject to being recouped. Any additional amount claimed by claimant should be denied only insofar as it is a separate item of entitlement based on fraud.
6. No recoupment action appears necessary where a final and valid settlement voucher has eliminated an earlier false claim. This assumes that where there has been an earlier false claim for lodgings, for example, the final settlement voucher contains no claim for subsistence expenses for that day.

This decision concerns the proper procedures to be followed in handling claims which are suspected of being fraudulent. It primarily involves the claims of civilian employees for reimbursement of expenses incurred while on temporary duty which have been supported by lodging costs that are inflated, nonexistent, or misrepresented in some manner. It was requested by Mr. John K. Scott, Director, Plans and Systems, Department of the Air Force.

Mr. Scott states that in addition to the current instructions concerning the treatment of fraudulent claims, which are contained in Air Force Manual 177-101, paragraph 20729, the Air Force has issued interim guidance to all major commands in letter form dated March 25, 1977. Mr. Scott asks whether this guidance, based on the Air Force's interpretation of 41 Comp. Gen. 206 (1961); 41 Comp. Gen. 285 (1961); 44 Comp. Gen. 110 (1964); and B-172915, September 27, 1971, conveys the intent of those decisions. He also specifically addresses certain issues as follows:

"1. When an accounting and finance officer (AFO) either denies payment or recoups a claim, and such action is substantiated by an Office of Special Investigation report or other supportive facts that lead to a firm conclusion that a claimed item(s) is tainted or false, may the AFO deny the use of Air Force channels in processing a claim/reclaim to the General Accounting Office (GAO)? In such case, may the claimant be advised that he is left solely to his remedy in the Court of Claims? Alternatively, if you consider that the claimant nevertheless can submit his claim/reclaim directly to GAO, may he be advised that he can communicate directly with the GAO concerning the matter or seek remedy in the Court of Claims? It is emphasized that the use of Air Force channels in processing a claim/reclaim would be denied only when there is documented evidence that the claim involved a false statement.

"2. Should the guidance in the aforementioned Comptroller General decisions with regard to amounts to be denied (in the case of unpaid claims) and recouped (in the case of paid claims) continue to be followed by AFOs? That is, should the total amount of an unpaid false or tainted claim, which claim includes per diem, transportation furnished in kind through use of a Government transportation request (GTR), and miscellaneous reimbursable expenses (taxi fares, porter tips, registration fees), be denied, or should denial be limited to the line item (e.g., per diem) believed to be tainted?

"3. With regard to paid false or tainted claims, should recoupment continue to be limited to the tainted line item in the claim?

"4. If either recoupment or denial is to be limited to the line item associated with a false statement, should per diem be divided into separate components--lodgings (\$19) and subsistence and incidentals (\$16)--for recoupment and/or

B-189072

denial purposes? In this regard it is noted that JTR, Volume 1, paragraph M4205, and JTR, Volume 2 paragraph C4552, prescribe a fixed amount for meals and incidental expenses and an additional amount based upon the average actual cost for lodging. Thus, under these policies, false statements would concern only the lodging portion of per diem.

"5. What constitutes 'reasonable suspicion' as that term is used in 41 Comp. Gen. 285 (1961) and 44 Comp. Gen. 110 (1964)? Is 'reasonable suspicion' on the part of an AFM sufficient basis to support both recoupment and denial action?

"6. In what manner should a travel advance be accounted for when a false final settlement voucher is involved? Should the total of the advance be recouped or only that part attributable to the false statement? Regardless how the advance is to be treated, should any additional amounts actually due the claimant based upon the final settlement voucher be denied?

"7. What should be the disposition of a partial travel payment and a final settlement voucher in the following situation: An individual is paid a partial travel payment at a temporary duty station. It is subsequently determined that a false statement was submitted in support of the partial travel payment. Thereafter, before any recoupment is made, the individual at his permanent station submits a final settlement voucher that is valid because it has eliminated the earlier false claims."

Comments on the Air Force's submission were received from Mr. Kenneth T. Blaylock, President, American Federation of Government Employees. We have taken his views into account in our consideration of the questions submitted by the Air Force.

Concerning the first question, section 71 of title 31, United States Code, states that:

B-189072

"All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."  
(Underscoring supplied.)

There is no doubt that, if an employee wishes to contest his agency's denial of his claim, he may do so by filing his claim with the General Accounting Office (GAO). See B-51325, October 7, 1976. Thus, even though a claimant's agency may consider his claim to be fraudulent, the claimant has a right in the law to have his claim adjudicated at GAO. An agency may not foreclose a claimant's right to GAO adjudication of his claim by deciding that the claim is fraudulent. It would not be proper, therefore, to inform such claimant that his only recourse after his agency's denial of his claim would be in the courts. Accordingly, a claimant who wishes to contest the administrative denial of his claim believed by his agency to be fraudulent should be advised by his agency that he may do so by filing his claim with GAO. As to the use of agency channels, we point out that, if a claimant sent his allegedly fraudulent claim directly to GAO, our Claims Division would have to request a report on the claim from the agency so that the agency's views on the claim would be a part of the record upon which the claim would be adjudicated. See 4 GAO Manual § 8-2 (1967). In view of the above, in order to expedite the processing of such a claim which an employee wishes settled by GAO, his claim should be forwarded through agency channels, and the appropriate report and recommendation of the agency concerning the allegedly fraudulent claim may be forwarded therewith. 4 C.F.R. § 31.4 (1977).

With regard to whether all or part of a voucher may be denied because some portion of the claim is based on fraud (questions 2, 3, and 4) the following was stated in 41 Comp. Gen. 285, at 288.

"\* \* \* each separate item of pay and allowances is to be viewed as a separate claim and we do not believe that the fact that several such items may be included in a single voucher for purposes of payment affords sufficient basis for concluding that they have lost their character as separate claims."

B-189072

We do not view the rule in 44 Comp. Gen. 110, wherein the claim was for the amount due pursuant to a contract, to be applicable to the individual claims made on a travel voucher.

As to what constitutes a separate item for these purposes, such an item is one which the employee could claim independently of his other entitlements. Accordingly, a fraudulent claim for per diem would not necessitate the denial of the other separate items on the voucher, which are not fraudulently based. As to subsistence expenses, the voucher may be separated according to individual days whereby each day comprises a separate item of per diem or actual subsistence expense allowance. B-172915, September 27, 1971, is modified accordingly. A fraudulent statement for any subsistence item taints the entire subsistence claim for that day.

We have also held that where an item of pay and allowances is wrongfully obtained through fraud, misrepresentation or otherwise, such payment is an erroneous payment and is for recoupment as such. 41 Comp. Gen. 285 (1961). The recoupment of the improperly paid item should be made to the same extent and amount as the denial of an unpaid claim based on fraud. 41 Comp. Gen. 285 (1961) and 41 id. 206 (1961) are clarified. Questions 2, 3, 4, and 7, relating to recoupments of payments on fraudulent claims, are answered accordingly.

With respect to question 5 as to what constitutes "reasonable suspicion" of fraud which would support the denial of a claim or recoupment action in the case of a paid voucher, we have held as follows that:

"\* \* \* the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than a suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty is required to be drawn." B-187975, July 28, 1977.

It is difficult to prescribe exact rules concerning fraud or misrepresentation since the question of whether fraud exists depends on the

B-189072

facts or each case. We believe that although it is the employee's responsibility to accurately complete a travel voucher to ensure proper payment, it may not be automatically assumed that an employee is making a fraudulent claim merely because he has not observed all the niceties and requirements of the Federal Travel Regulations in completing a voucher. It should be borne in mind that many innocent mistakes are made in the completion of vouchers and not every inaccuracy on a voucher should be equated with an intent to defraud the Government. Generally, where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, a finding of fraud would not normally be warranted absent the most convincing evidence to the contrary. By the same token, where discrepancies are glaring, involve great sums of money, or they are frequently made, a finding of fraud could be more readily made absent a satisfactory explanation from the claimant.

In regard to question 6, when an employee has received a travel advance and he then submits a false final settlement voucher, the travel voucher submitted in liquidation of the advance shall be treated in the same manner as any other travel voucher in which fraud is found to be involved. As stated above, only the separate items attributed to the false statement should be disallowed. In accordance with the instructions above, any additional amount claimed should be denied insofar as it is tainted with fraud.


As to question 7, when an employee submits a final and valid settlement voucher from which their has been eliminated the false claim, no recoupment action appears necessary under the rules set forth above. This assumes that where there has been a false claim for lodgings, for example, the final settlement voucher contains no claim for subsistence expenses for that day.

We also believe that it is necessary in one other point to clarify the role of the accounting officer in connection with fraudulent claims. Mr. Blaylock pointed out that recoupment or denial action has been taken on claims believed fraudulent even though the Department of Justice has not prosecuted the employees involved. We do not think that the Department of Justice's failure to prosecute an employee for submitting a fraudulent claim in any way estops the Government from taking denial or recoupment action against him. The Department of Justice, for various reasons, among which may be the economy of United States Attorney's time or lack of resources, may choose not to prosecute an employee for his submission of a fraudulent claim. The fact that Justice chooses not to prosecute, however, does not mean

B-109072

that the employee's claim must be paid or that recoupment action is not warranted.

The Air Force's instructions, where inconsistent with the guidance in this decision, should be modified accordingly.

  
Acting Comptroller General  
of the United States